



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STRAFFORD TEACHERS ASSOCIATION
NEA-New Hampshire

Petitioner

and

STRAFFORD SCHOOL DISTRICT

Respondent

CASE NO. T-0335

DECISION NO. 82-73

APPEARANCES

Representing the Strafford Teachers Association:

Cathy Hall, UniServ Director, NEA-NH
Anne Richmond, Esq., Counsel

Representing the Strafford School District:

Bradley F. Kidder, Esq., Counsel
Barry L. Clough, Superintendent

Also in Attendance:

Maryellen Plante, Teacher
Emma Clark, School Board Member
Richard Boyce, Strafford School Board
David Harrigan, School Board Member
Leon Worthley, Asst. Superintendent

BACKGROUND

In April, 1982, the parties to this case agreed upon a bargaining unit of 12 people, 11 teachers and the school nurse. And, without a pre-election conference, the PELRB ordered an election for May 12, 1982.

At the election of May 12, 1982, a list of names was issued from the Superintendent's office containing 14 names, including two (2) who were part-time (in the Strafford School District, although full-time teachers). Prior to the start of the election, the NEA representative objected to the inclusion of the two (2) part-time teachers. The representative of the School Superintendent responded that the part-time teachers were properly on the list of professional employees since they had been included by the Super-

intendent's office. PELRB Executive Director, Mrs. LeBrun informed the NEA Representative that it was too late to object to the unit and the NEA representative agreed to the enlarged unit whereupon the Superintendent's representative added another part-time professional who had been left off the list. The election then proceeded resulting in a 6 to 6 tie vote. A run-off election was scheduled for May 25, 1982 and resulted in a 7 to 6 vote favoring the Association, with the full-time teachers, the school nurse and one part-time teacher voting.

On May 28, 1982, the Superintendent filed an objection to the election under PELRB Rule 3.11, indicating that the list of voters supplied by his office was in error and that part-time teachers were never intended to be included. The Superintendent asked for a hearing in order that PELRB could nullify the election of May 25 and order a new election for the unit composed of only full-time teachers and the school nurse.

The Teachers Association objected to the voiding of the election on the grounds that:

- (1) PELRB Rules 3.8 and 3.10 prohibits challenging a voter after the election has been conducted;
- (2) the School District waived its rights to object by agreeing to the election and failing to follow the PELRB rules requiring them to challenge before the election;
- (3) if either party wished to change the unit now, a procedure is available for a petition for modification of the unit.

A hearing was held at the Board's office on June 10, 1982.

FINDING OF FACTS AND RULINGS OF LAW

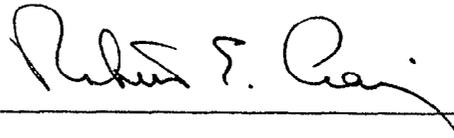
At the hearing some discussion began over what the full-time teachers wanted but testimony and argument was restricted to the election and subsequent evidence and other testimony was ruled inadmissible.

The facts as developed indicate that, both parties admit that a mistaken interpretation led to the acceptance of an erroneous list for the voting in both elections.

The School Board contends that this mistake was unintentional and should void the election, admitting that no objection was raised until the outcome was known.

DECISION AND ORDER

- A. The Rules of the PELRB are clear in that Rule 3, Section 3.8 prohibits the challenging of voters after an election;
- B. a remedy exists should either party wish to modify the unit;
- C. PELRB has the final authority to determine the appropriate bargaining unit, even though parties may agree between themselves;
- D. PELRB declines to nullify the results of the election of May 26, 1982 and further,
- E. orders the parties to negotiate as appropriate under RSA 273-A.



ROBERT E. CRAIG, Chairman

Signed this 4th day of November, 1982

By unanimous vote. Chairman Craig presiding, members Hilliard and Osman present and voting. Also present, Alternate member Verney and Executive Director LeBrun